

DALA STATISTICS FOR DEP APPEALS: NUMBERS FROM DALA DOCKET AND DALA ADMINISTRATIVE MAGISTRATES ADJUDICATING DEP APPEALS  
April 10, 2007

Total DEP appeals open at DALA since 01/20/04:<sup>1</sup> 385<sup>2</sup>

DEP appeals closed at DALA since 01/20/04:<sup>3</sup> 204

DEP appeals open at DALA as of 04/04/07: 181, of which 176 are assigned to Administrative Magistrates for adjudication. Of these 176 assigned appeals:

- 104 are stayed.<sup>4</sup> The leading reasons for a stay are that the parties have reported the appeal as settling, or there is a pending related court appeal, including a local wetlands bylaw appeal.
- 39 of the 72 pending appeals that are not stayed were transferred recently to DALA. In all of these cases, prehearing conferences have been held since January 1, 2007 or are scheduled to be held shortly.

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<sup>1/</sup> January 20, 2004 is the date on which the former Administrative Law Judges of EOE's Office of Administrative Appeals (formerly at DEP, until St. 2003, c. 41 transferred the unit to the environmental secretariat) were transferred to DALA and began adjudicating DEP appeals as DALA Administrative Magistrates. A DEP appeal is not filed initially at DALA; it is filed initially at DEP, which then "prescreens" the appeal and determines whether to transfer it to DALA for adjudication.

<sup>2/</sup> This includes 352 DEP appeals that were opened at DALA and/or assigned a DALA docket number after January 20, 2004. The remainder were never assigned a DALA Docket Number and were, or are being, adjudicated only under the old DEP docket number assigned prior to January 20, 2004.

<sup>3/</sup> A DEP appeal is "closed at DALA" when a DALA Administrative Magistrate issues either a recommended final decision (after which the case is transferred back to DEP for the issuance of a Final Decision) or a "routine" final decision (for example, the dismissal of an appeal as moot), or when the parties file a settlement agreement at DEP, leaving nothing further for the DALA Administrative Magistrate to decide.

<sup>4/</sup> A "stay" freezes or suspends the adjudication of an appeal at DALA, and is ordered by the Administrative Magistrate, either by way of a stay order or by an order requiring that the parties file settlement status reports at regular intervals. The most common reason for staying an appeal is that a settlement may resolve the appeal: typically, the parties report active settlement efforts that are likely to resolve the appeal and request that the adjudication schedule be suspended so they can focus on settling instead of on litigation. A DEP wetlands permit appeal may also be stayed if the project in question was also denied under a local wetlands bylaw and the local denial is being challenged in court. A stay may also be ordered if the project in question requires review by another agency, for example MEPA review by the Executive Office of Environmental Appeals that may change the project's size, scope or design, or review by U.S. EPA.

A stay ends if and when the reason for it disappears, a fact that any party may bring to the Administrative Magistrate's attention at any time by way of a motion to lift the stay.

